

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JAMES MCELWEE,

Plaintiff,

Case # 20-CV-6121-FPG

v.

DECISION AND ORDER

DR. RIPPLE MARFATIA, et al.,

Defendants.

On February 26, 2020, *pro se* Plaintiff James McElwee filed a complaint pursuant to 42 U.S.C. § 1983, alleging constitutional violations arising out of his incarceration. ECF No. 1. The Court referred the matter to Magistrate Judge Mark W. Pedersen, who held a scheduling conference. However, Plaintiff did not appear at subsequent conferences. The Clerk's Office issued an order to show cause why the cause should not be dismissed for failure to prosecute. ECF No. 17. Plaintiff did not respond, and Magistrate Judge Pedersen issued a Report and Recommendation on October 27, 2021 (the "R&R"), recommending that Plaintiff's case be dismissed. ECF No. 18.

No party filed objections to Magistrate Judge Pedersen's R&R, and the time to do so has expired. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2).

Pursuant to 28 U.S.C. § 636(b)(1)(C), a district court "shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." *See also* Fed. R. Civ. P. 72(b)(2). When a party does not object to the R&R, as here, however, the court will review it for clear error. *EEOC v. AZ Metro Distributors, LLC*, 272 F. Supp. 3d 336, 339 (E.D.N.Y. 2017) (quoting *Dafeng Hengwei Textile Co. v. Aceco Indus. & Commercial Corp.*, 54 F. Supp. 3d 279, 283 (E.D.N.Y. 2014)). "When performing such a 'clear error' review, the court need only satisfy itself that there is no clear error on the face of the record


in order to accept the recommendation.” *Boice v. M+W U.S., Inc.*, 130 F. Supp. 3d 677, 686 (N.D.N.Y. 2015) (internal quotation marks omitted). After conducting the appropriate review, the court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C).

Since no objections were filed here, the Court is not required to conduct a *de novo* review of the R&R. Furthermore, having reviewed the record and the R&R, the Court has not identified any plain error requiring correction.¹

Accordingly, the Court ADOPTS Magistrate Judge Payson’s Report and Recommendation, ECF No. 18. The Clerk of Court shall close this case.

IT IS SO ORDERED.

Dated: November 15, 2021
Rochester, New York



HON. FRANK P. GERACI, JR.
United States District Judge
Western District of New York

¹ In any event, even applying a *de novo* standard of review, this Court would reach the same conclusion.